

SEP 27 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

RAUL CARLOS JULIO; et al.,

Petitioners,

v.

PETER D. KEISLER, * Acting Attorney
General,

Respondent.

No. 04-73978

Agency Nos. A75-767-037
A75-767-038

MEMORANDUM**

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007 ***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Raul Carlos Julio and his wife Maria Alejandra Sanchez Lopez, natives and

* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an Immigration Judge's ("IJ") decision denying their applications for cancellation of removal. To the extent we have jurisdiction it is pursuant to 8 U.S.C. § 1252. We dismiss in part, deny in part, and grant in part the petition for review, and remand.

We lack jurisdiction to review the agency's determination that Carlos Julio failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 890 (9th Cir. 2003).

Carlos Julio's and Sanchez Lopez's contention that the streamlined BIA decision violates their constitutional rights is foreclosed by *Falcon-Carriche v. Ashcroft*, 350 F.3d 845, 848 (9th Cir. 2003).

As to petitioner Sanchez Lopez only, an intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 619 (9th Cir. 2006), we held that voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure. *See also Tapia v. Gonzalez*, 430 F.3d 997, 1004 (9th Cir. 2005) (border turnaround does not necessarily interrupt the continuity of an alien's physical presence in the United States). Based on the record before us, there is no indication that Sanchez Lopez was informed of the terms of her departure or that it was accepted

voluntarily or knowingly.

Accordingly, we grant the petition for review and remand for further proceedings consistent with *Ibarra-Flores* and *Tapia* with respect to petitioner Sanchez Lopez. We deny in part and dismiss in part the petition for review with respect to petitioner Carlos Julio.

Petitioners' remaining contentions are without merit.

**PETITION FOR REVIEW DISMISSED in part; DENIED in part; and
GRANTED in part; REMANDED.**